

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE McDONALD,

Plaintiff,

v.

BRIGGS, NOVAK, OTT, KONNIE WEST,
AMY RUSSELL, LAWRENCE, and ALAN
KELLY

Defendants.

Case No. 2:08-cv-11731

HONORABLE STEPHEN J. MURPHY, III

**ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION (document no. 26), GRANTING PLAINTIFF'S
MOTION TO SET ASIDE RULING (document no. 25), AND GRANTING IN
PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (document no. 20)**

The *pro se* plaintiff in this suit is Lawrence McDonald, a prisoner in the custody of the state of Michigan. The defendants are various prison personnel who had dealings with McDonald at one time or another. McDonald alleges that the defendants violated his constitutional rights by discriminating against him on the basis of his sexual preference, and by retaliating against him when he filed grievances with respect to this alleged harassment.

This case was originally assigned to District Judge Paul V. Gadola, who referred it for all pretrial matters to Magistrate Judge Michael J. Hluchaniuk. Document no. 17. Presently before the Court is Judge Hluchaniuk's report and recommendation that defendants' motion for summary judgment be granted in part, and that McDonald be permitted additional time to respond to the remainder of the motion. In response to defendants' initial motion for summary judgment, and before Judge Hluchaniuk had ruled on the motion, McDonald filed a "motion to set aside ruling," which the magistrate recommends construing as a partial

response to the motion, and additionally as a motion for additional time to respond to the remainder.

McDonald concurs that summary judgment should be granted in favor of defendants Lawrence and Kelly, on the grounds that they were not personally involved in the incidents he complains of. Accordingly, Judge Hluchaniuk recommends that the motion be granted as to these two defendants. Judge Hluchaniuk further recommends that McDonald be given an additional 30 days to file a supplemental brief on the motion. The Court notes that McDonald has already done so. See document no. 27.

The Court's standard of review for a magistrate judge's report and recommendation depends upon whether a party files objections. If a party does not object to the report and recommendation, the Court does not need to conduct a review by any standard. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, as no party has filed objection to Magistrate Judge Hluchaniuk's report and recommendation, this Court need not and will not conduct a review.

WHEREFORE it is hereby **ORDERED** that the Report and Recommendation is **ADOPTED**, plaintiff's motion to set aside ruling is **GRANTED**, and defendants' motion for summary judgment is **GRANTED IN PART**, as to defendants Lawrence and Kelly. Pursuant to Judge Gadola's order, the remainder of the motion for summary judgment remains on reference to the magistrate judge.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: August 18, 2009

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 18, 2009, by electronic and/or ordinary mail.

Alissa Greer
Case Manager